

§ 404.1295

reconsidered determination to request the Commissioner to review that determination. The rules on what the request should contain and the time for filing the request are the same as in §§ 404.1292 and 404.1293.

§ 404.1295 Commissioner's review—for wages paid prior to 1987.

Upon request by the State, the Commissioner will review the reconsidered determination (or the assessment, allowance or disallowance as initially issued if reconsideration is waived under § 404.1291). If necessary, the Commissioner may request the State to furnish additional evidence. Based upon the evidence considered in connection with the assessment, allowance or disallowance and any additional evidence submitted by the State or otherwise obtained by the Commissioner, the Commissioner affirms, modifies, or reverses the assessment, allowance or disallowance.

§ 404.1296 Commissioner's notification to the State—for wages paid prior to 1987.

The Commissioner notifies the State in writing of the decision on the assessment, allowance, or disallowance, and the basis for the decision.

HOW A STATE MAY SEEK COURT REVIEW OF COMMISSIONER'S DECISION—FOR WAGES PAID PRIOR TO 1987

§ 404.1297 Review by court—for wages paid prior to 1987.

(a) *Who can file civil action in court.* A State may file a civil action under section 218(t) of the Act as it read prior to the enactment of Pub. L. 99-509 requesting a district court of the United States to review any decision the Commissioner makes under section 218(s) of the Act as it read prior to the enactment of Pub. L. 99-509 concerning the assessment of an amount due, the allowance of a credit or refund, or the disallowance of a claim for credit or refund.

(b) *Where the civil action must be filed.* A State must file the civil action in the district court of the United States for the judicial district in which the State's capital is located. If the civil action is brought by an interstate instrumentality, it must file the civil ac-

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tion in the district court of the United States for the judicial district in which the instrumentality's principal office is located. The district court's judgment is final except that it is subject to review in the same manner as judgments of the court in other civil actions.

(c) *No interest on credit or refund of overpayment.* SSA has no authority to pay interest to a State after final judgment of a court involving a credit or refund of an overpayment made under section 218 of the Act.

[53 FR 32976, Aug. 29, 1988, as amended at 62 FR 38451, July 18, 1997]

§ 404.1298 Time for filing civil action—for wages paid prior to 1987.

(a) *Time for filing.* The State must file the civil action for a redetermination of the correctness of the assessment, allowance or disallowance within 2 years from the date the Commissioner mails to the State the notice of the decision under § 404.1296. Where the 2-year period ends on a Saturday, Sunday, legal holiday or Federal nonwork day, an action filed on the next Federal workday is considered timely filed.

(b) *Extension of time for filing.* The Commissioner, for good cause shown, may upon written application by a State filed prior to the end of the two-year period, extend the time for filing the civil action.

§ 404.1299 Final judgments—for wages paid prior to 1987.

(a) *Overpayments.* Payment of amounts due to a State required as the result of a final judgment of the court shall be adjusted under §§ 404.1271 and 404.1272.

(b) *Underpayments.* Wage reports and contribution returns required as the result of a final judgment of the court shall be filed under §§ 404.1237-404.1251. We will assess interest under § 404.1265 where, based upon a final judgment of the court, contributions are due from a State because the amount of contributions assessed was not paid by the State or the State had used an allowance of a credit or refund of an overpayment.